EXPORT OF SERVICE

1. ***What is Export of Service?***

As per Rule 6A (1) of Service Tax Rules, 1994, provision of any service provided or to be provided shall be treated as export of service when,

a) *The provider of service is located in the taxable territory,*
b) *The recipient of service is located outside India,*
c) *The service is not a service specified in the section 66D of the Act,*
d) *The place of provision of the service is outside India,*
e) *The payment for such service has been received by the provider of service in convertible foreign exchange, and*
f) *The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act*

2. ***Whether service tax is applicable on services exported?***

As per charging Section 66B of the Finance Act, 1994 as applicable w.e.f. 01.07.2012, service tax is levied on the value of all services other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another.

Further as per Rule 6A of Service Tax Rules, 1994 service will be treated as Export of Service only when place of provision of service is outside India.

Combined reading of Section 66B and Rule 6A implies that If the service exported is in accordance with Rule 6 ,then also Service tax is not required to be paid and otherwise also if the service services are provided outside taxable territory, service tax is not applicable. .

3. ***Whether export of service shall be treated as exempted service for the purpose of Rule 6(3) of CCR Rules 2004?***

As per Rule 2 "e" of CENVAT Credit Rules 2004, "exempted service" means a-

1) *taxable service which is exempt from the whole of the service tax leviable thereon; or*
2) *service, on which no service tax is leviable under section 66B of the Finance Act; or*
3) *taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;*

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.

Thus, export of service shall not be treated as exempted service for the purpose of Rule 6(3).

Even in cases service provided or agreed to be provided satisfies conditions specified in Rule 6A but payment is not received with in a period of six months or such extended period as may be allowed by RBI, such service shall not be regarded as exempted service for the purpose of Rule 6(3).

4. If export proceeds are received in Indian currency, will it be denied export benefit?

If export proceeds are received in Indian currency, no export benefits shall be available.

5. What will be the point of taxation in case of export of service?

Earlier, it was specified in Rule 7 of Point of Taxation Rules 2011 that the point of taxation in case of export of service is date of receipt of payment but, in case of services the payment is not received within the period specified by the Reserve Bank of India, the point of taxation shall be determined, as if this rule does not exist.

However, after amendments in 2012, the supra provision has been deleted. At present, the point of taxation is not specified in rules in regard of export of service because in any case the service tax is not required to be paid on export of service.

6. If a foreign national pays in convertible foreign currency for service received by him in India, and he returns to foreign country, will it be treated as export?

If services are rendered in India, it shall not be treated as export, even if it is rendered to any foreign national and he pays in convertible foreign currency.

7. Is any rebate allowed on service tax or duty paid on input services used for provision of export of service?

Rule 6A(2) of the Service Tax Rules, 1994 provides power to Central Government to grant rebate of service tax or duty paid on input services or input used for provision of Export of Services. Government has issued Notification No. 41/2012-ST dated 29th June, 2012 to provide conditions, procedures and manner for claiming rebate claim.

8. What are the conditions for claiming rebate?

(a) the rebate shall be granted by way of refund of service tax paid on the specified services.

Explanation. - *For the purposes of this notification,-*

(A) "specified services" means-

i. in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;

ii. in the case of goods other than (i) above, taxable services used for the export of said goods;

but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (l) of rule (2) of the CENVAT Credit Rules, 2004;

(B) "place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act,1944(1 of 1944);

(b) the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification or on the basis of documents;

(c) the rebate on the basis of documents shall not be claimed wherever the difference between the amount of rebate on the basis of rates specified and on the basis of documents is less than twenty per cent of the rebate available on the basis of documents;

(d) no CENVAT credit of service tax paid on the specified services used for export of goods has been taken under the CENVAT Credit Rules, 2004;

(e) the rebate shall not be claimed by a u nit or developer of a Special Economic Zone

9. What is the manner of claiming rebate on the basis of rates specified?

a) manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with the customs;

(b) exporter who is not so registered under the provisions referred to in clause (a), shall register his service tax code number and bank account number with the customs;

(c) service tax code number referred to in clause (b), shall be obtained by filing a declaration in Form A-2 to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that--

(i) the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board(FOB) value of the said goods, on the basis of rate specified in the Schedule;

(ii) no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services;

(iii) conditions of the notification have been fulfilled;

(e) service tax paid on the specified services eligible for rebate under this notification, shall be calculated by applying the rate prescribed for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;

(f) amount so calculated as rebate shall be deposited in the bank account of the exporter;

(g) shipping bill or bill of export on which rebate has been claimed on the basis of rate specified in the Schedule, by way of procedure specified in this paragraph, shall not be used for rebate claim on the basis of documents;

(h) where the rebate involved in a shipping bill or bill of export is less than rupees fifty, the same shall not be allowed

10. What is the manner of claiming rebate on the basis of documents?

(a) rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;

(b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;

(c) the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall file a claim for rebate of service tax paid on the taxable service used for export of goods to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1;

(d) the exporter who is not so registered under the provisions referred to in clause (c), shall before filing a claim for rebate of service tax, file a declaration in Form A-2, seeking allotment of service tax code, to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the exporter referred to in clause (d), within seven days from the date of receipt of the said Form A-2;

(f) on obtaining the service tax code, exporter referred to in clause (d), shall file the claim for rebate of service tax to the Assistant Commissioner of Central Excise or the Deputy

Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, in Form A-1 **;**

(g) the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.

Explanation *.- For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);*

(h) where the total amount of rebate sought under a claim is upto 0.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 shall be submitted along with relevant invoice, bill or challan, or any other document for each specified service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax paid thereon, certified in the manner specified in sub-clauses (A) and (B):

(A) if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be self-certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

(B) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorised by the Board of Directors, to the effect that specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill number;

(i) where the total amount of rebate sought under a claim is more than 0.50% of the total FOB value of the goods exported, the procedure specified in clause (h) above shall stand modified to the extent that the certification prescribed thereon, in sub- clauses (A) and (B) shall be made by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961(43 of 1961), as the case may be;

(j) where the rebate involved in a claim is less than rupees five hundred, the same shall not be allowed;

(k) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself,-

(i) that the service tax rebate claim filed in Form A-1 is complete in every respect;

(ii) that duly certified documents have been submitted evidencing the payment of service tax on the specified services ;

(iii) that rebate has not been already received on the shipping bills or bills of export on the basis of procedure prescribed in paragraph 2;and

(iv) that the rebate claimed is arithmetically accurate,

refund the service tax paid on the specified service within a period of one month from the receipt of said claim:

Provided that where the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, has reason to believe that the claim, or the enclosed documents are not in order or that there is a reason to deny such rebate, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made thereunder;

11. What will happen in case sales proceeds is not received within time allowed by RBI?

Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made thereunder.

12. Where can one file the rebate claims or refund of unutilized CENVAT Credit?

Rule 5 of CENVAT Credit Rules, 2004 allow refund of CENVAT Credit to manufacturer or service provider who has cleared goods or has provided services without payment of duty or service tax, as the case may be.

The rebate claims or refund of utilized CENVAT Credit application has to be filed in the Central Excise or Service Tax Division/Group where the assessee is registered.

<u>Quantum of refund amount will be calculated as per formula below:-</u>

$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net CENVAT credit}}{\text{Total turnover}}$$

Where,—
(A) "Refund amount" means the maximum refund that is admissible;
(B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule

(5C) of rule 3, during the relevant period;

(C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) "Export turnover of services" means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

(E) "Total turnover" means sum total of the value of—

(a)all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

(b)export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and

(c)all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.